IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1791 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GSRTC

Versus

BALEVIA BADAJI V., AT AND POST ITAWADA,

Appearance:

MR HARDIK C RAWAL for Petitioner

MR DA SURANI for Respondent No. 1

CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 18/07/2000

ORAL JUDGEMENT

#. Rule. Mr.D.A.Surani learned counsel waives service of notice of Rule on behalf of the respondent.

#. Heard Mr. Hardik Raval learned counsel on behalf of

the petitioner Gujarat State Road Transport Corporation(hereinafter referred to as the Corporation). I have also heard Mr. D.A.Surani learned counsel on behalf of the respondent.

#. The respondent was working as Helper under the Corporation in Dhrangadhra Depot. The respondent was absent from duty without any permission from 25.12.1988 to 11.1.1989. Because of the unauthorised absence of the respondent from duty, the petitioner Corporation was put to a lot of inconvenience in managing the services. For the aforesaid misconduct , departmental proceedings was started and a charge sheet has been framed and in the departmental proceedings charges were found to be proved against the respondent and accordingly the Disciplinary Authority of the Corporation , after hearing the respondent, dismissed him from service by order dated 12.4.1989. The respondent approached the Labour Court, Surendranagar by way of filing Ref.(LCS) No. 172 of 1990. The Labour Court after hearing the parties took a lenient view and directed the corporation to reinstate the respondent in service with 25 percent back wages. Having felt aggrieved by the order of the Labour Court, Surendranagar, the Corporation has filed this petition for quashing the order of the Labour Court. Mr.Raval, learned counsel on behalf of the petitioner Corporation submitted that the misconduct of the respondent was serious as the respondent has remained absent without permission and has caused disruption in the services of the Corporation and therefore, such misconduct should not be treated lightly and if this type of misconduct goes unpunished, then it would be very difficult for the Corporation to manage its affairs smoothly. Learned counsel on behalf of the petitioner submitted that the Labour Court has committed an error in interfering with the order of dismissal of the Disciplinary Authority. Learned counsel further submitted that when there is no illegality in the departmental proceedings, the Labour Court should not have interfered with the decision of the Disciplinary Authority. Mr. Surani learned counsel on behalf of the respondent submitted that for 17 days absence, punishment of dismissal is harsh and the Labour Court did not commit illegality or error in taking a liberal view holding that the punishment imposed on respondent is disproportionate to the offence alleged to have been committed by him. Learned counsel on behalf of the petitioner Corporation also submitted that in the past also the respondent was absent from duty on two occasions without permission and therefore, the respondent deserves severe punishment.

#. I have considered the submissions of the learned counsel for both the parties. It is true that 17 days' absence should not lead to dismissal from service and that punishment is definitely disproportionate to the offence alleged to have been committed by the respondent. Therefore, I am of the view that the Labour Court has taken a lenient view and directed reinstatement of the respondent in service. However, considering the past conduct of the respondent, I am of the view that the Labour Court should not have awarded 25 percent back wages to the respondent. Considering the submissions of the learned counsel for both the sides and on going through the papers I am of the view that awarding 20 percent back wages will meet the ends of justice and accordingly the judgment and award of the Labour Court, Surendranagar passed in Ref.(LCS) No.172 of 1990 on 21.8.1999 is modified to the extent that the respondent will be entitled to 10 percent back wages instead of 25 percent back wages as awarded by the Labour Court, Surendranagar. With the aforesaid modification in the judgment and award of the Labour Court, Surendranagar the petition is allowed in part. Rule is made absolute to the aforesaid extent. No order as costs.

(P.K.Sarkar.J)

govindan